

**NATIONAL LABOR RELATIONS BOARD  
REGION 5**

**INTERNATIONAL BROTHERHOOD OF  
ELECTRICAL WORKERS LOCAL 126,**

**Petitioner**

**and**

**EAST COAST UNDERGROUND, INC.,**

**Employer**

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**CASE NO. 5-RC-148929**

**PETITIONER IBEW LOCAL 126's ANSWERING BRIEF  
IN OPPOSITION TO RESPONDENT'S EXCEPTIONS TO REPORT  
AND RECOMMENDATION OF HEARING OFFICER**

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Petitioner Local 126, International Brotherhood of Electrical Workers, AFL-CIO ("Local 126" or "the Union") pursuant to Rule 102.69 of the Board's Rules and Regulations, hereby files this Answering Brief in Opposition to the Exceptions filed by Respondent East Coast Underground, Inc. ("East Coast" or "the Employer").<sup>1</sup> Even a cursory perusal of the Employer's Exceptions reveals that they utterly lack merit, and should not be sustained. Rather, and consist with the Board's Rules, the Regional Director should proceed to dispose of the Challenged Ballots in the manner recommended by the Hearing Officer, and then issue an appropriate Certification of the Election Results.

***Respondent's Exceptions to The Hearing Officer's Findings Regarding  
East Coast Mechanics***

Although East Coast launches a flurry of Exceptions to the Hearing Officer's findings, it devotes no attention in its Brief to any except for the Hearing Officer's conclusion that East Coast's

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<sup>1</sup> Petitioner IBEW Local 126 relies as well on its Post-Hearing Brief on Challenged Ballots, filed on October 5, 2015.

Mechanics “operate as a separate and distinct department” from Electrical Line workers, and his finding that any occasions where the Electrical Line employees provide aid to Mechanics in performing their own duties are merely “incidental” to the Linemen’s regular duties.

With regard to the conclusion that the Mechanics work as a separate and distinct department from the East Coast Linemen, the Respondent takes issue with the Hearing Officer’s statement that ECU’s Vice- President Charles Lewis, testified to that effect. *See* ECU’s Brief in Support of Exceptions, at 5. However, the transcript of the proceedings clearly demonstrates that the Hearing Officer was correct. The following exchange in Lewis’s cross-examination, in which he acknowledged the differing hours of work each classification has at East Coast, bears this out:

Q: Okay. The Mechanics that we’re talking about here, again Mr. Coulbourne, Hurley, and Trice, and Mr. Parker, they work 5 days a week; do they not?

Mr. Lewis: Most times, yes.

Q: Eight hours a day most times?

Mr. Lewis: Most times.

Q: Okay. And the *Line Department* employees work 4 hours a - four days a week, correct?

Mr. Lewis: Yes.

Q: And 10 hours a day.

Mr. Lewis: That’s correct.

Tr. 338 (emphasis added). Moreover, Lewis admitted that the Mechanics and the Line Employees are separately supervised, Tr. 184; 278; 371-72; 208; 361, and are on a separate roster for overtime opportunities. Tr. 342-43. As the Hearing Officer additionally found, there is no evidence of interchange between the two classifications, and they have a separate pay scale, with compensation being based on wholly separate criteria: A Line Department employees' pay is determined by a "tiered system based on training and experience level," while Mechanics' "pay is dependent on unknown reasons determined by ECU management." Report and Recommendation of Hearing Officer, at 14. Finally, the Hearing Officer found – and East Coast did not challenge this finding – that there is no interchange between the classifications "because," at least in part, "the training for mechanics varies substantially from [line] crew members." *Id.* All this constitutes indicia that the Mechanics are arranged in a categorical department separate and distinct from the Electrical Line workers, and all is supported by record evidence that the Hearing Officer found credible.

East Coast also contests the Hearing Officer's conclusion that any instance of Linemen helping Mechanics perform their duties "is clearly incidental to linemen's regular duties." Report and Recommendation of Hearing Officer, at 14, n. 24. Importantly, the Hearing Officer heard testimony relative to this conclusion from two individuals – Alfred Hughes for the Respondent, and Lawrence White for the Petitioner. The Hearing Officer properly made differing credibility determinations concerning these two witnesses. Hughes, who gave the only "evidence" of such mutual aid, was found by the Hearing Officer to be "so vague that I place no evidentiary weight in the testimony" he proffered on this issue. *Id.* (see also Report and Recommendation, at 11: "Hughes' testimony was vague concerning the time, detail, and frequency in which this type of

collaboration or interchange between mechanics and linemen occurs.”). In sharp contrast, the Hearing Officer “fully credit[ed]” the opposing testimony of Lawrence White, “when he said, ‘linemen are hired as linemen, mechanics are hired as mechanics, so I’ve never known a mechanic to get in the bucket and do power line work. I’ve never known linemen [to] get out of the bucket’ and ‘do mechanic work ... on their truck.’” *Id.*<sup>2</sup> Moreover, as Local 126 pointed out in its Post-Hearing Brief, the Hearing Officer’s finding that any acts of “mutual assistance” between linemen and mechanics were merely incidental, and not persuasive evidence of a community of interest, comported fully with the thrust of Decisional Board Law. *See* Local 126’s Brief, at 9-10, citing *Ore-Ida Foods*, 313 NLRB 1016, 1020 (1994); *Grace Industries, LLC*, 358 NLRB No. 62, Slip Op. at 6 (2012). Therefore, the Hearing Officer’s recommendation that the challenged ballots of East Coast Mechanics Coulbourne, Hurley and Trice remain unopened and uncounted should be accepted by the Board.

***Respondent’s Exceptions to the Hearing Officer’s Findings with  
Regard to Steven Wooters***

East Coast next excepts to the Hearing Officer’s recommendation that the challenged ballot of Steven Wooters remains unopened and uncounted. Its first argument, that Wooters’ ballot should count because he was not “explicitly excluded” in the Stipulated Unit, borders on the absurd, particularly with regard to this specific employee. As the Hearing Officer appropriately observed,

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<sup>2</sup> In a footnote, the Hearing Officer expanded on his determination to credit White over Hughes: “Lawrence White was not subpoenaed by the Union to provide testimony until the first day of the hearing. Thankfully, White dutifully complied with the subpoena. Based upon White’s clear, concise, and direct answers to both parties’ questions, I found him to be a very credible witness.” Report and Recommendation at 11, n. 21.

“[a]fter two full days of hearing in which eight witnesses testified ... Wooters’ actual job classification remains a mystery, though not due to lack of inquiry.” Report and Recommendation, at 19. Indeed, there was once again a dispute between Hughes and White concerning this issue, this time as to what Wooters’ job title should be. Hughes testified that “he *personally* considered Wooters to be an apprentice lineman.” *Id.*, (emphasis in original). White testified that he and others referred to him as “Steve the tool man.” *Id.*, see also Petitioner’s Post-Hearing Brief, at 19-20. The Hearing Officer properly ruled that the “credible record evidence” supported the latter’s description of Wooters’ role at East Coast. Since he was not clearly included in the Stipulated Unit, the Hearing Officer correctly examined his familial ties to the past owners and current operators of the Company, and how his work life and wages differed from the Unit employees. Here there *was* no dispute: Hughes himself testified that his brother-in-law’s main mission for the Employer was testing tools and equipment and making “minor, very minor” repairs “on some occasions.” Tr. 421. Company witness Lewis similarly testified that Wooters’ chief responsibility was traveling “all over” East Coast’s territory, “helping out with tools, delivering tools [and] picking up tools.” Tr. 355.

For this, Wooters’ compensation, the Hearing Officer noted, equaled \$32 per hour – from ten to sixteen dollars more than that of East Coast’s apprentice linemen. Report and Recommendation at 20. Correctly applying well-established Board precedent, the Hearing Officer found that this factor alone constituted “special treatment” because of Wooters’ familial connections, and fully justified his exclusion from the bargaining unit. *Id.*, citing *Blue Star Ready Mix*, 305 NLRB 429, 430-31 (1991).

***Conclusion***

For all the foregoing reasons, the Report and Recommendation On Challenged Ballots should be accepted, the appropriate ballots should be opened and counted, and an appropriate Certification issued promptly thereafter.

**Respectfully submitted,**

**SPEAR WILDERMAN, P.C.**

**BY:**

  
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**CHARLES T. JOYCE, ESQUIRE**  
**Counsel to Petitioner, IBEW Local 126**

**DATED: November 18, 2015**